Note respects to
Mr. A. Evarts.

SUPREME COURT,

STATE OF NEW YORK.

JONATHAN LEMMON, A CITIZEN OF THE STATE OF VIRGINIA,

vs.

THE PEOPLE OF THE STATE OF NEW YORK, EX REL. LOUIS NAPOLEON.

MR. EVARTS' POINTS.

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NEW YORK:
WM. C. BRYANT & CO., PRINTERS, 41 NASSAU ST., COR. LIBERTY.

1857.

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28 JAN 1993
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SUPREME COURT.

THE PEOPLE, *ex rel.* LOUIS NAPOLEON,

ads.

JONATHAN LEMMON.

} Points for The People.

Statement.

On the sixth day of November, 1852, Jonathan Lemmon and Juliet his wife, before that time citizens of the State of Virginia, and there domiciled, on their way to the State of Texas, with the intention there to establish a new domicil, were in the city of New York, having with them eight colored persons. These persons, in Virginia, under the laws thereof, were the slaves of said Juliet, and she and her husband purposed to take them to Texas, and there to retain them as slaves of the said Juliet. The route and mode of travel adopted by said Jonathan and Juliet for themselves and their slaves, was by steamer from Norfolk, in Virginia, to the port of New York, and thence by a new voyage to Texas. In execution of this plan of travel, they and their slaves had reached the city of New York, and were awaiting the opportunity of a voyage to Texas, with no intention on the part of Jonathan or Juliet that they or the eight colored persons should remain in New York for any other time, or for any other purpose, than until opportunity should present to take passage for all to Texas.

A writ of *habeas corpus* on behalf of these eight colored persons was issued by Mr. Justice Paine, of the Superior Court, to inquire into the cause of their detention, and Jonathan Lemmon showed for cause (1) that they were slaves of his wife Juliet in Virginia, and (2) that she held them as such in New York in transit from Virginia through New York to Texas.

To these facts, as a legal cause for the restraint of the liberty of the eight colored persons, the people demurred, and, after argument, Mr. Justice Paine set them at large.

The respondent, Jonathan Lemmon, brought the proceedings by *certiorari* into this Court.

POINTS.

First Point.—The writ of *habeas corpus* belongs of right to every person restrained of liberty within this State, under any pretence whatsoever, unless by certain judicial process of Federal or State authority.

1 *Rev. Stat., p.* 563, § 21.

This right is absolute, (1) against legislative invasion, and (2) against judicial discretion.

Cons. Art. I, § 4.
1 *Rev. Stat., p.* 565, § 31.

In behalf of a human being, restrained of liberty within this State, the writ, *by a legal necessity*, must issue.

The office of the writ is to enlarge the person in whose behalf it issues, unless *legal cause* be shown for the restraint of liberty or its continuation; and enlargement of liberty, unless such cause to the contrary be shown, flows from the writ by the same legal necessity that required the writ to be issued.

1 *Rev. St., p.* 567, § 39.

Second Point.—The whole question of the case, then, is, does the relation of slave-owner and slave, which subsisted in Virginia between Mrs. Lemmon and these persons while there, attend upon them while commorant within this State, in the course of travel from Virginia to Texas, so as to furnish "legal cause" for the restraint of liberty complained of, and so as to compel the authority and power of this State to sanction and maintain such restraint of liberty.

1. Legal cause of restraint can be none other than an authority to maintain the restraint which has the force of law within this State.

Nothing has, or can claim, the authority of law within this State, unless it proceeds—

(A.) From the sovereignty of the State, and is found in the Constitution or Statutes of the State, or in its unwritten common (or customary) law; or—

(B.) From the Federal Government, whose Constitution and Statutes have the force of law within this State.

So far as the *Law of Nations* has force within this State, and so far as, "by comity," the *laws of other sovereignties* have force within this State, they derive their efficacy, not from their own vigor, but by administration as a part of the law of this State.

Story Confl. Laws, §§ 18, 20, 23, 25, 29, 33, 35, 37, 38.

Bank of Augusta vs. *Earle*, 13 *Pet.*, 519, 589.

Dalrymple vs. *Dalrymple*, 2 *Hagg. Consist. Rep.* 59.

Dred Scott vs. *Sandford*, 19 *How.*, 460–1, 486–7.

II. The Constitution of the United States and the Federal Statutes give no law on the subject.

The Federal Constitution and legislation under it

have, in principle and theory, *no concern* with the domestic institutions, the social basis, the social relations, the civil conditions, which obtain within the several States.

The actual exceptions are special and limited, and prove the rule.

They are—

1. A reference to the civil conditions obtaining within the States to furnish an artificial enumeration of persons as the basis of Federal Representation and direct taxation distributively between the States.

2. A reference to the political rights of suffrage within the States as, respectively, supplying the basis of the Federal suffrage therein.

3. A provision securing to the citizens of every State within every other the privileges and immunities (whatever they may be) accorded in each to its own citizens.

4. A provision preventing the laws or regulations of any State governing the civil condition of persons within it, from operating upon the condition of persons "held to service or labor in one State, "under the laws thereof, escaping into another."

Const. U. S., Art. I, sec. 2, *subd.* 1 *and* 3.
Art. IV., sec. 2, *subd.* 1 *and* 3.
Laws of Slave States, and of Free States, on Slavery.
Ex parte Simmons, 4 *W. C. C. R.*, 396.
Jones vs. *Van Zandt*, 2 *McLean*, 597.
Groves vs. *Slaughter*, 15 *Peters*, 506, 508–510.
Prigg vs. *Penn.*, 16 *Pet.*, 611–12, 622–3–5.
Strader vs. *Graham*, 10 *How.*, 82, 93.
New York vs. *Miln*, 11 *Pet.*, 136.
Dred Scott vs. *Sandford.*
Ch. J., 452.
Nelson J., 459, 461.
Campbell J., 508–9, 516–17.

None of these provisions, in terms or by any intendment, support the right of the slave-owner in his own State or in any other State, except the last. This, by its terms, is limited to its special case, and necessarily excludes Federal intervention in every other.

III. The common law of this State permits the existence of slavery in no case within its limits.

Cons., Art. I, § 17.
Sommersett's Case, 20 *How. St. Trials,* 79.
Knight vs. *Wedderburn, Id.,* § 2.
Forbes vs. *Cochrane,* 2 *B. & C.,* 448.
Shanley vs. *Harvey* 2 *Eden,* 126.
The Slave Grace, 2 *Hagg. Adm.,* 118, 104.
Story Confl. Laws, § 96.
Co. Litt., 124 *b.*

IV. The statute law of this State effects an *universal* proscription and prohibition of the condition of slavery within the limits of the State.

1 *R. St., p.* 656, § 1 ; *p.* 659, § 16.
2 *R. St., p.* 664, § 28.
Dred Scott, vs. *Sandford,* 19 *How.,* 591–595.
Laws 1857, *p.* 797.

Third Point.—It remains only to be considered whether, under the principles of the *Law of Nations,* as governing the intercourse of friendly States, and as adopted and incorporated into the administration of our municipal law, *comity* requires the recognition and support of the relation of slave-owner and slave between strangers passing through our territory, notwithstanding the absolute policy and comprehensive legislation which prohibit that relation and render the civil condition of slavery *impossible* in our own society.

The *comity,* it is to be observed, under inquiry, is

(1) of the *State* and not of the *Court*, which latter has no authority to exercise comity in behalf of the State, but only a judicial power of determining whether the main policy and actual legislation of the State exhibit the comity inquired of; and (2) whether the comity extends to yielding the affirmative aid of the State to maintain the mastery of the slave-owner and the subjection of the slave.

Story Confl. Laws, § 38.
Bk. Augusta v. *Earle*, 13 *Pet.*, 589.
Dred Scott v. *Sandford*, 19 *How.*, 591.

I. The principles, policy, sentiments, public reason and conscience, and authoritative will of the State sovereignty, as such, have been expressed in the most authentic form, and with the most distinct meaning, that slavery, whencesoever it comes, and by whatsoever casual access, or for whatsoever transient stay, SHALL NOT BE TOLERATED UPON OUR SOIL.

That the particular case of *slavery during transit* has not escaped the intent or effect of the legislation on the subject, appears in the express permission once accorded to it, and the subsequent abrogation of such permission.

1 *Rev. St.*, *Part I*, *ch. XX*, *Tit.* 7, § 6, 7.
Repealing Act, *Laws* 1841, *ch.* 247.

Upon such a declaration of the principles and sentiments of the State, through its Legislature, there is no opportunity or scope for judical doubt or determination.

Story Confl. Laws, §§ 36, 37, 23, 24.
Vattel, *p.* 1, §§ 1, 2.

II. But, were such manifest enactment of the sovereign will in the premises wanting, as matter of general reason and universal authority, the *status* of slavery is never upheld in the case of strangers, resident or in transit, when the domestic laws reject and suppress such *status* as a civil condition or social relation.

(A.) The same reasons of justice and policy which forbid the sanction of law and the aid of public force to the proscribed *status* among our own population, forbid them in the case of strangers within our territory.

(B.) The *status* of slavery is not a natural relation, but is contrary to nature, and at every moment it subsists, it is an ever new and active violation of the law of nature.

Cons. Va , Bill of Rights, §§ 1, 14, 15.

It originates in mere predominance of physical force, and is continued by mere predominance of social force or municipal law.

Whenever and wherever the physical force in the one stage, or the social force or municipal law in the other stage, fails, the *status* falls, for it has nothing to rest upon.

To continue and defend the *status*, then, within our territory, the stranger must appeal to *some* municipal law. He has brought with him no system of municipal law to be a weapon and a shield to this *status ;* he finds no such system here. His appeal to force against nature, to law against justice, is vain, and his captive is free.

(C.) The Law of Nations, built upon the law of nature, has adopted this same view of the *status* of slavery, as resting on force against right, and finding no support outside of the jurisdiction of the municipal law which establishes it.

(D.) A State proscribing the *status* of slavery in its domestic system, has no apparatus, either of law or of force, to maintain the relation between strangers.

It has no code of the slave-owner's rights or of the slave's submission, no processes for the enforcement of either, no rules of evidence or adju-

dication in the premises, no guard-houses, prisons or whipping-posts to uphold the slave-owner's power and crush the slave's resistance.

But a comity which should recognise a *status* that can subsist only by force, and yet refuse the force to sustain it, is illusory. If we recognise the fragment of slavery imported by the stranger, we must adopt the fabric of which it is a fragment and from which it derives its vitality.

If the slave be eloigned by fraud or force, the owner must have replevin for him or trover for his value.

If a creditor obtain a foreign attachment against the slave-owner, the sheriff must seize and sell the slaves.

If the owner die, the surrogate must administer the slave as assets.

If the slave give birth to offspring, we have a native-born slave.

If the owner, enforcing obedience to his caprices, maim or slay his slave, we must admit the *status* as a plea in bar to the public justice.

If the slave be tried for crime, upon his owner's complaint, the testimony of his fellow-slaves must be excluded.

If the slave be imprisoned or executed for crime, the value taken by the State must be made good to the owner, as for "private property taken for public use."

Everything or nothing, is the demand from our *comity*; everything or nothing, must be our answer.

(E.) The rule of the Law of Nations which permits the transit of strangers and their property through a friendly State does not require our laws to uphold the relation of slave-owner and slave between strangers.

By the Law of Nations, men are not the subject of property.

By the Law of Nations, the municipal law which

makes men the subject of property, is limited with the power to enforce itself, that is by its territorial jurisdiction.

By the Law of Nations, then, the strangers stand upon our soil in their natural relations as men, their artificial relation being absolutely terminated.

The Antelope, 10 *Wheat.*, 120, 121, *and cases ut supra.*

(F.) The principle of the law of nations which attributes to the law of the domicil the power to fix the civil *status* of persons, does not require our laws to uphold, *within our own territory*, the relation of slave-owner and slave between strangers.

This principle only requires us (1) to recognise the consequences in reference to subjects within our own jurisdiction, (so far as may be done without prejudice to domestic interests,) of the *status* existing abroad; and (2) where the *status* itself is brought within our limits and is here permissible as a domestic *status*, to recognise the foreign law as an authentic origin and support of the actual *status*.

It is thus that *marriage* contracted in a foreign domicil, according to the municipal law there, will be maintained as a continuing marriage here, with such traits as belong to that relation here; yet, incestuous marriage or polygamy, lawful in the foreign domicil, cannot be held as a lawful continuing relation here.

Story Confl. Laws, § § 51, 51, a., 89, 113, 114, 96, 104, 620, 624.

(G.) This free and sovereign State, in determining to which of two external laws it will by *comity* add the vigor of its adoption and administration within its territory, viz., a foreign municipal law

of force against right, or the law of nations conformed to its own domestic policy under the same impulse which has purged its own system of the odious and violent injustice of slavery, will prefer the Law of Nations to the law of Virginia, and set the slave free.

Impius et crudelis judicandus est, qui libertati non favet. Nostra jura IN OMNI CASU *libertati dant favorem*

Co. Litt. ut supra.

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